REMARKS

The above-identified application has been reviewed in light of the Final Office Action mailed October 22, 2010. Claim 25 has been amended herein, and claims 1-24, 26 and 30 had previously been cancelled, so claims 25 and 27-29 are currently pending and under consideration. Applicants respectfully submit that this Amendment, submitted in connection with a Request for Continued Examination, is fully supported by the specification and does not introduce any new subject matter, and that claims 25 and 27-29 are allowable over the references of record as presented herein.

In the Final Office Action, the Examiner rejected claims 25 and 27-29 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0090339 to Whalen et al. (hereinafter "Whalen") in view of U.S. Patent Application Publication No. 2004/0224864 to Patterson et al. (hereinafter "Patterson"), or U.S. Patent Application Publication No. 2004/0197302 to Porter et al. (hereinafter "Porter"). The rejections were maintained for reasons of record in the previous office action filed on July 20, 2009 and December 24, 2009, and April 9, 2010.

While Whalen teaches embolic compositions including a biocompatible polymer, a biocompatible contrast agent, and a biocompatible solvent, nowhere does Whalen teach or suggest a composition consisting of up to 40 weight percent of ethylene vinyl alcohol copolymer, dimethylsulfoxide; and from 45 to no more than 60 weight percent of tantalum contrast agent having an average particle size of about 5 microns or less, wherein the ratio of ethylene vinyl

alcohol copolymer to the tantalum contrast agent is from 0.077 to 0.90 and the weight percent of each component is based on the total weight of the composition, and further wherein said composition has a viscosity of 150 cSt or higher at 40°C, as recited in claim 25. Whalen does not teach the use of a contrast agent in an amount from about 45 to no more than 60 weight percent in the composition.

Neither Patterson nor Porter remedy the deficiencies of Whalen, no matter how these references may be combined. While Patterson discloses a composition of a biocompatible polymer, a contrast agent, and fumed silica (a rheology modifier), nowhere does Patterson teach or suggest a composition consisting of up to 40 weight percent of ethylene vinyl alcohol copolymer; dimethylsulfoxide; and from 45 to no more than 60 weight percent of tantalum contrast agent having an average particle size of about 5 microns or less, wherein the ratio of ethylene vinyl alcohol copolymer to the tantalum contrast agent is from 0.077 to 0.90 and the weight percent of each component is based on the total weight of the composition, and further wherein said composition has a viscosity of 150 cSt or higher at 40°C, as recited in claim 25.

Similarly, while Porter teaches a rheologically-modified composition comprising a solution including a biocompatible prepolymer, a contrast agent, and a rheological modifier, nowhere does Porter teach or suggest a composition consisting of up to 40 weight percent of ethylene vinyl alcohol copolymer; dimethylsulfoxide; and from 45 to no more than 60 weight percent of tantalum contrast agent having an average particle size of about 5 microns or less, wherein the ratio of ethylene vinyl alcohol copolymer to the tantalum contrast agent is from

0.077 to 0.90 and the weight percent of each component is based on the total weight of the composition, and further wherein said composition has a viscosity of 150 cSt or higher at 40°C, as recited in claim 25.

As to the above references, the only references that teach greater than 40 weight percent of water-insoluble contrast agent (Porter and Patterson) further employ a rheology modifier.

Thus, for at least the foregoing reasons, it is respectfully submitted that claim 25 is patentable over Whalen in view of Patterson and/or Porter, no matter how these references may be combined. Claims 27-29 depend from claim 25 and incorporate all of its limitations therein. Thus, for at least the reasons listed above with respect to claim 25, claims 27-29 are similarly patentable over Whalen in view of Patterson and/or Porter. Accordingly, withdrawal of the rejection of claims 25 and 27-29 under 35 U.S.C. §103(a) is respectfully requested.

Claims 25 and 27-29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Whalen in view of U.S. Patent No. US 3,937,800 to Dure-Smith et al. (hereinafter "Dure-Smith").

As noted above in detail, nowhere does Whalen teach or suggest a composition consisting of up to 40 weight percent of ethylene vinyl alcohol copolymer, dimethylsulfoxide; and from 45 to no more than 60 weight percent of tantalum contrast agent having an average particle size of about 5 microns or less, wherein the ratio of ethylene vinyl alcohol copolymer to the tantalum contrast agent is from 0.077 to 0.90 and the weight percent of each component is based on the

total weight of the composition, and further wherein said composition has a viscosity of 150 cSt or higher at 40°C, as recited in claim 25. Whalen does not teach the use of a contrast agent in an amount from about 45 to no more than 60 weight percent in the composition.

Dure-Smith fails to remedy the deficiencies of Whalen, no matter how these references may be combined. Dure-Smith teaches an X-ray contrast media composition including an X-ray opaque ingredient combined with common contrast media ingredients of a non-opaque nature (suspending agent, viscosity builder, surfactant, etc.). According to Dure-Smith, these compositions will give a smooth, flowable, evenly dispersed contrast media. (See Dure-Smith at column 2, lines 63-65.)

However, nowhere does Dure-Smith teach or suggest a composition consisting of up to 40 weight percent of ethylene vinyl alcohol copolymer, dimethylsulfoxide; and from 45 to no more than 60 weight percent of tantalum contrast agent having an average particle size of about 5 microns or less, wherein the ratio of ethylene vinyl alcohol copolymer to the tantalum contrast agent is from 0.077 to 0.90 and the weight percent of each component is based on the total weight of the composition, and further wherein said composition has a viscosity of 150 cSt or higher at 40°C, as recited in claim 25.

Moreover, as previously noted, the oily compositions and aqueous suspension disclosed in Dure-Smith are formulated to be administered by insufflation of 10-20 ml of composition by aerosol into the lung to coat the mucosal ling of the bronchial tree. (See, for example, column 1, lines 5-6, and column 1, lines 46-49.) Thus, as the compositions of Dure-Smith are not for direct

intravascular injection, it is respectfully submitted they would not be compatible with blood and could form insoluble droplets. Accordingly, the combination of Dure-Smith with Whalen would render the composition of claim 25 inoperable.

Claims 25-29 were rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,667,767 and claims 1-8 and 16-23 of U.S. Patent No. 5,695,480.

Applicants maintain that none of the cited references teach or suggest a contrast agent concentration of from 45 to no more than 60 weight percent. At best, the prior art teaches a maximum of about 40 weight percent tantalum. Furthermore, the art teaches that preferred embodiments use less than 40 weight percent tantalum. Such would teach away from the currently claimed range found in now presented Claim 25.

In view of the above, withdrawal of this rejection is requested.

Applicant believes that all issues raised in the Office Action have been responded to fully. Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicant's undersigned attorney at the number listed below.

Respectfully submitted,

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